

IN THE BOARD OF SUPERVISORS
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

_____ day _____, 20__

PRESENT: Supervisors

ABSENT:

RESOLUTION NO. _____

RESOLUTION AFFIRMING THE DECISION OF THE
PLANNING COMMISSION AND CONDITIONALLY APPROVING
THE APPLICATION OF THE COUNTY OF SAN LUIS OBISPO
FOR DEVELOPMENT PLAN/COASTAL DEVELOPMENT PERMIT
DRC2012-00044

The following resolution is now offered and read:

WHEREAS, on March 14, 2013, the Planning Commission of the County of San Luis Obispo (hereinafter referred to as the "Planning Commission") duly considered and conditionally approved the application of the County of San Luis Obispo for Development Plan/Coastal Development Permit DRC2012-00044; and

WHEREAS, Jeff Edwards has appealed the Planning Commission's decision to the Board of Supervisors of the County of San Luis Obispo (hereinafter referred to as the Board of Supervisors) pursuant to the applicable provisions of Title 23 of the San Luis Obispo County Code; and

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WHEREAS, a public hearing was duly noticed and conducted by the Board of Supervisors on June 4 2013, and determination and decision was made on June 4, 2013; and

WHEREAS, at said hearing, the Board of Supervisors heard and received all oral and written protests, objections, and evidence, which were made, presented, or filed, and all persons present were given the opportunity to hear and be heard in respect to any matter relating to said appeal; and

WHEREAS, the Board of Supervisors has duly considered the appeal and finds that the appeal should be denied and the decision of the Planning Commission should be affirmed and that the application should be approved subject to the findings and conditions set forth below.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California, as follows:

1. That the recitals set forth hereinabove are true, correct and valid.
2. That the Board of Supervisors makes all of the findings of fact and determinations set forth in revised Exhibit A attached hereto and incorporated by reference herein as though set forth in full.
3. That the Mitigated Negative Declaration prepared for this project is hereby approved as complete and adequate and as having been prepared in accordance with the provisions of the California Environmental Quality Act.
4. That the appeal filed by Jeff Edwards is hereby denied and the decision of the Planning Commission is affirmed and that the application of County Department of Public Works for Development Plan/Coastal Development Permit DRC2012-00044 is

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hereby approved subject to the conditions of approval set forth in Exhibit B attached hereto and incorporated by reference herein as though set forth in full.

Upon motion of Supervisor _____, seconded by Supervisor _____, and on the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

the foregoing resolution is hereby adopted.

Chairperson of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

[SEAL]

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APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By: 
Deputy County Counsel

Dated: May 14, 2013

STATE OF CALIFORNIA,)
) ss.
County of San Luis Obispo,)

I, _____, County Clerk and ex-officio Clerk
of the Board of Supervisors, in and for the County of San Luis Obispo, State of California, do
hereby certify the foregoing to be a full, true and correct copy of an order made by the Board of
Supervisors, as the same appears spread upon their minute book.

WITNESS my hand and the seal of said Board of Supervisors, affixed this
day of _____, 20__.

County Clerk and Ex-Officio Clerk of the Board
of Supervisors

(SEAL)

By _____
Deputy Clerk.

EXHIBIT A
DRC2012-00044 PROJECT FINDINGS

Environmental Determination

- A. The Environmental Coordinator, after completion of the initial study, finds that there is no substantial evidence that the project may have a significant effect on the environment, and the preparation of an Environmental Impact Report is not necessary. Therefore, a Mitigated Negative Declaration (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 15000 et seq.) has been issued on January 31, 2013 and is hereby adopted for this project. Mitigation measures are proposed to address air quality, biological resources, cultural resources, and water are included as conditions of approval.

Development Plan

- B. The proposed project or use is consistent with the San Luis Obispo County General Plan because the use is an allowed use and as conditioned is consistent with the intent of all of the General Plan policies.
- C. As conditioned, the proposed project or use satisfies all applicable provisions of Title 23 of the County Code and the Local Coastal Program.
- D. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the project is designed to improve flood control protection along Arroyo Grande Creek and Highway 1 in the vicinity of the Oceano County Airport, and does not generate activity that presents a potential threat to the surrounding property and buildings. This project is subject to Ordinance and Building Code requirements designed to address health, safety and welfare concerns.
- E. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because the project would expand existing storm water drainage infrastructure that is similar to, and will not conflict with, the surrounding lands and uses.
- F. The proposed project or use will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because construction-related impacts will be mitigated to acceptable levels and no long-term traffic impacts are expected to occur.

Coastal Access

- G. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act, because the project would not affect existing access, the project is not adjacent to the beach, and public access is already allowed

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over the majority of the site because the project is located primarily in existing public right-of-ways. .

Airport Review Area

- H. The proposed project and land use will not generate hazards or obstructions to aircraft operations in the vicinity of the airport because proposed improvements would be located underground or at ground level. Annual vegetation management would maintain willows in the project area to allowable heights as defined by state and federal airport regulations in order to maintain flight safety, as the vegetation to be trimmed is near the end of the airport runway.
- I. The project would not result in any significant changes in existing developed uses and will be compatible with airport activities. The project is consistent with the Airport Land Use Plan in that it does not expose additional people or structures to significant hazards associated with the airport.

Flood Hazard Area

- J. The project is designed to improve storm water drainage and flood conditions in the project vicinity and would not subject additional people or structures to increased damage as a result of flood inundation. The project is compatible with the flood hazard designation and would result in improved capacity of storm water drainage facilities and alleviate flooding that currently exists in the project area.
- K. Grading associated with the project will incorporate standard drainage and erosion control measures to minimize the potential for soil erosion and sedimentation, including through development of a new sediment basin and annual sediment and trash removal.

Sensitive Resource Areas (SRA)

- L. The development will not create significant adverse effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area designation, and the project includes elements that are beneficial to habitat and water quality within Arroyo Grande Creek.
- M. Natural features and topography have been considered in the design and siting of all proposed physical improvements and the project is proposed to avoid and minimize impacts to the sensitive resources within, adjacent to, and downstream of the proposed improvements.
- N. The proposed ground disturbance and tree trimming is the minimum necessary to provide improvements to the drainage system in compliance with mandatory regulations (Federal Aviation Administration) and will not create significant adverse effects on the identified sensitive resource, because best management practices will be implemented during construction to minimize impacts and disturbance to the SRA.
- O. The soil and subsoil conditions are suitable for any proposed grading and site preparation and drainage improvements have been designed to prevent soil erosion, and sedimentation of streams through undue surface runoff. The County is required to

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comply with all state and federal sedimentation and erosion control requirements, and the project as proposed is designed to have minimal or no disturbance to the sensitive lagoon habitat area as the project is not adjacent to the lagoon.

Environmentally Sensitive Habitats

- P. There will be no significant negative impact on the identified sensitive habitat and the proposed use will be consistent with the biological continuance of the habitat because the project as proposed is designed to have minimal or no disturbance to the sensitive lagoon habitat area as the project is not adjacent to the lagoon and is sited partially within and adjacent to an existing disturbed area. Overall, the project would have beneficial effect on habitat and water quality within the Environmentally Sensitive Habitat Area.
- Q. The proposed use will not significantly disrupt the habitat because measures to avoid unnecessary disturbance have been adopted through project design and construction.

Archaeologically Sensitive Area

- R. The site design and development incorporate adequate measures to ensure that archeological resources will be acceptably and adequately protected. An archaeological assessment was conducted for this project with no significant resources identified and additional subsurface testing prior to construction is a condition of the project. Should any archaeological resources be discovered, construction activities would stop until a qualified archaeologist has analyzed the resource and developed a mitigation plan, which the project would implement prior to commencing construction.

Local Coastal Program

- S. The proposed project is consistent with the Local Coastal Program and the public access and recreation policies of Chapter 3 of the California Coastal Act, because the project site is within the proximity of adequate public beach access and is designed to protect sensitive coastal and biological resources.

EXHIBIT B

DRC2012-00044 PROJECT CONDITIONS OF APPROVAL

Approved Development

1. This approval authorizes a request by the San Luis Obispo County Department of Public Works, in coordination with Caltrans and other local agencies, for a Coastal Development Permit for development of the Oceano Drainage Project. Implementation of the project would involve construction of new storm water drainage system components, grading alterations, and annual vegetation and sedimentation maintenance. The project would be located in and alongside State Highway 1 in Oceano, beginning at the intersection of 13th Street/Paso Robles Street and Highway 1 and terminating approximately 1,250 feet to the southwest at Arroyo Grande Creek. It would include improvements within County and State right of way and on private property, and would result in the disturbance of approximately 14.4 acres and 12,500 cubic yards of cut and fill.

Conditions required to be completed prior to the start of construction

Site Development

2. **Prior to start of construction**, plans submitted shall show all development consistent with the approved site plan.

Fire Safety

3. **At the time of application for construction permits**, all plans submitted to the Department of Planning and Building shall meet the fire and life safety requirements of the California Fire Code.

Mitigation Measures

Air Quality

4. [AQ-1] Should hydrocarbon contaminated soil be encountered during construction activities, the APCD must be notified as soon as possible and no later than 48 hours after affected material is discovered to determine if an APCD Permit will be required. In addition, the following measures shall be implemented immediately after contaminated soil is discovered:
 - a. Covers on storage piles shall be maintained in place at all times in areas not actively involved in soil addition or removal;
 - b. Contaminated soil shall be covered with at least six inches of packed uncontaminated soil or other TPH-non-permeable barrier such as plastic tarp. No headspace shall be allowed where vapors could accumulate;
 - c. Covered piles shall be designed in such a way to eliminate erosion due to wind or water. No openings in the covers are permitted;
 - d. The air quality impacts from the excavation and haul trips associated with removing the contaminated soil must be evaluated and mitigated if total

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- emissions exceed the APCD's construction phase thresholds;
- e. During soil excavation, odors shall not be evident to such a degree as to cause a public nuisance; and
 - f. Clean soil must be segregated from contaminated soil.
5. [AQ-2] Prior to any construction activities at the site, the Project proponent shall ensure that a geologic evaluation is conducted to determine if Naturally Occurring Asbestos (NOA) is present within the area that will be disturbed. If NOA is not present, an exemption request must be filled with the APCD. If NOA is found at the site, the applicant must comply with all requirements outlined in the Asbestos ATCM.
6. [AQ-3] If building(s) are removed or renovated; or utility pipelines are scheduled for removal or relocation, this Project may be subject to various regulatory jurisdictions, including the requirements stipulated in the National Emission Standard for Hazardous Air Pollutants (40CFR61, Subpart M – asbestos NESHAP).
7. [AQ-4] Projects with grading areas that are greater than 4-acres or within 1,000 feet of any sensitive receptors shall implement the following mitigation measures to manage fugitive dust emissions such that they do not exceed the APCD 20% opacity limit (APCD rule 401) and do not impact off-site areas prompting nuisance violations (APCD rule 402):
- a. Reduce the amount of disturbed area where possible;
 - b. Use of water trucks or sprinkler systems in sufficient quantities to prevent airborne dust from leaving the site. Increased watering frequency would be required whenever possible;
 - c. All dirt stock pile areas should be sprayed daily as needed;
 - d. Permanent dust control measures identified in the approved Project revegetation and landscape plans should be implemented as soon as possible, following completion of any soil disturbing activities;
 - e. Exposed ground areas that are planned to be reworked at dates greater than one month after initial grading should be sown with a fast germinating, non-invasive, grass seed and watered until vegetation is established;
 - f. All disturbed soil areas not subject to revegetation should be stabilized using approved chemical soil binders, jute netting, or other methods approved in advance by the APCD;
 - g. All roadways, driveways, sidewalks, etc. to be paved should be completed as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used;
 - h. Vehicle speed for all construction vehicles shall not exceed 15 mph on any unpaved surface at the construction site;
 - i. All trucks hauling dirt, sand, soil, or other loose materials are to be covered or should maintain at least two feet of freeboard (minimum vertical distance between top of load and top of trailer) in accordance with CVC Section 23114;
 - j. Install wheel washers where vehicles enter and exit unpaved roads onto streets,

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- or wash off trucks and equipment leaving the site;
 - k. Sweep streets at the end of each day if visible soil material is carried onto adjacent paved roads. Water sweepers with reclaimed water should be used where feasible;
 - l. All PM10 mitigation measures require should be shown on grading and building plans; and
 - m. The contractor or builder shall designate a person or persons to monitor fugitive dust emissions and enhance the implementation of the measures as necessary to minimize dust complaints, reduce visible emissions below 20% opacity, and to prevent transport of dust offsite. Their duties shall include holidays and weekend periods when work may not be in progress. The name and telephone number of such persons shall be provided to the APCD Compliance Division prior to the start of any grading, earthwork or demolition.
8. [AQ-5] To help reduce the emissions impact of diesel vehicles and equipment used to construct the Project, the applicant shall implement the following idling control techniques:
California Diesel Idling Regulations
- a. On-road diesel vehicles shall comply with Section 2485 of Title 13 of the California Code of Regulations. This regulation limits idling from diesel-fueled commercial motor vehicles with gross vehicular weight ratings of more than 10,000 pounds and licensed for operation on highways. It applies to California and non-California based vehicles. In general, the regulation specifies that drivers of said vehicles:
 - 1. Shall not idle the vehicle's primary diesel engine for greater than 5 minutes at any location, except as noted in Subsection (d) of the regulation; and
 - 2. Shall not operate a diesel-fueled auxiliary power system (APS) to power a heater, air conditioner, or any ancillary equipment on that vehicle during sleeping or resting in a sleeper berth for greater than 5.0 minutes at any location when within 1,000 feet of a restricted area, except as noted in Subsection (d) of the regulation.
 - b. Off-road diesel equipment shall comply with the 5 minute idling restriction identified in Section 2449(d)(2) of the California Air Resources Board's In-Use off-Road Diesel regulation.
 - c. Signs must be posted in the designated queuing areas and job sites to remind drivers and operators of the State's 5 minute idling limit.
9. [AQ-6] Diesel Idling Regulations Near Sensitive Receptors
- Sensitive receptors appear to be located within 1000 feet of the Project area (residences, Oceano Elementary School grounds). In addition to State required diesel idling requirements, the Project applicant shall comply with these more restrictive requirements to minimize impacts to nearby sensitive receptors:

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- a. Staging and queuing areas shall not be located within 1,000 feet of sensitive receptors;
 - b. Diesel idling within 1,000 feet of sensitive receptors shall not be permitted;
 - c. Use of alternative fueled equipment is recommended; and
 - d. Signs that specify the no idling areas must be posted and enforced at the site.
10. [AQ-7] Proposed truck routes should be evaluated and selected to ensure routing patterns have the least impact to nearby residential communities and sensitive receptors, such as schools, daycare facilities, hospitals, and senior centers.

Biological Resources

11. [BR-1] Prior to construction, the County shall obtain all necessary permits, approvals, and authorizations from jurisdictional agencies. These may include, but may not be limited to: (1) ACOE, Section 404 Nationwide Permit 43; (2) RWQCB, Section 401 Water Quality Certification; and (3) CDFG, Section 1602 Streambed Alteration Agreement for activities within the tops of banks or outer edges of riparian canopies (whichever is furthest from the streambed) of Arroyo Grande Creek. The County shall adhere to all conditions included within these permits, approvals, and authorizations.
12. [BR-2] Prior to construction, exclusionary fencing shall be erected by the contractor at the boundaries of all construction areas to avoid equipment and human intrusion into adjacent creek/wetland habitats. The fencing shall remain in place throughout construction.
13. [BR-3] During Project activities, all trash that may attract predators shall be properly contained, removed from the work site and disposed of regularly. Following construction, all trash and construction debris shall be removed from work areas.
14. [BR-4] If determined to be necessary by the ACOE (lead federal agency), the ACOE will consult with NMFS and USFWS on behalf of the County for impacts to California red-legged frogs and steelhead. The County will adhere to all conditions included within the Biological Opinions issued for the Project.
15. [BR-5] Before any construction activities begin on the Project, a biologist shall conduct a training session for all construction personnel. The training session shall include a description of species that may be encountered during construction, the importance of these species and their habitat, the general measures that are being implemented to conserve these species as they relate to the Project, and the boundaries within which the Project may be accomplished. Brochures, books, and briefings may be used in the training session, provided that a qualified person is on hand to answer any questions.
16. [BR-6] All fueling and maintenance of vehicles and other equipment and staging areas shall occur at least 20 meters from any riparian habitat or water body. The

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County shall ensure contamination of habitat does not occur during such operations.

Prior to the onset of work, the County shall ensure that the contractor has prepared a plan to allow a prompt and effective response to accidental spills. All workers shall be informed of the importance of preventing spills and of the appropriate measures to take should a spill occur.

17. [BR-7] Prior to site disturbance, the County shall print Best Management Practices (BMPs) on all applicable construction plans. BMPs shall be implemented prior to, during, and following construction activities. Measures shall include, but not be limited to the following:
 - a. Silt fencing shall be placed along the down-slope side of the construction zone.
 - b. A spill and clean-up kit shall be stored onsite at all times.
 - c. Temporary and permanent erosion and sedimentation measures shall be implemented (e.g., silt fencing, hay bales, straw wattles, etc.).
18. [BR-8] If construction activities are conducted during the typical nesting bird season (February 15 – September 15th), preconstruction surveys shall be conducted by the County-approved biologist or County Environmental Resource Specialist prior to any construction activity or vegetation trimming to identify potential bird nesting activity, and:
 - a. If active nest sites of bird species protected under the Migratory Bird Treaty Act (MBTA) are observed within the vicinity of the Project site, then the Project shall be modified and/or delayed as necessary to avoid direct take of the identified nests, eggs, and/or young;
 - b. If active nest sites of raptors and/or bird species of special concern are observed within the vicinity of the Project site, then CDFG shall be contacted to establish the appropriate buffer around the nest site. Construction activities in the buffer zone shall be prohibited until the young have fledged the nest and achieved independence; and
 - c. Active nests shall be documented by a qualified biologist and a letter-report shall be submitted to the County, USFWS, and CDFG, documenting Project compliance with the MBTA and applicable Project mitigation measures.
19. [BR-9] To avoid inadvertent impacts to western pond turtle, red-legged frog, two-striped garter snake, steelhead, and nesting birds during grading and site disturbance activities, a biological monitor will conduct preconstruction surveys in Arroyo Grande Creek and adjacent areas within the Project site, conduct construction employee training prior to site disturbance and continue monitoring during grading and construction activities. In the instance a listed sensitive species is discovered, the County shall contact CDFG, NMFS, and USFWS for consultation, unless otherwise authorized under an NMFS- or USFWS-issued Biological Opinion. In the instance nesting birds are discovered, work shall cease until the birds have fledged and left the area, or CDFG or USFWS shall be consulted. If any swallow nests are observed, empty nests shall be removed prior to February 15, and shall continue to remove nests as they are being built to avoid impacts to active nests

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prior to construction.

20. [BR-10] A Habitat Mitigation and Monitoring Plan will be prepared and will include specific measures for restoration and revegetation of all temporarily disturbed areas. The Plan will include protection measures, standards for revegetation, a monitoring program to ensure proper implementation and maintenance of restored areas, and performance criteria to determine success.
21. [BR-11] Willow trimming and/or topping would occur outside of the nesting bird season. If willow trimming/topping could not occur outside of nesting bird season, a qualified biologist will conduct surveys for nesting birds prior to maintenance activities. If nesting birds are discovered within the maintenance area, CDFG shall be contacted to establish the appropriate buffer around the nest site. Maintenance activities in the buffer zone shall be prohibited until the young have fledged the nest and achieved independence; and active nests shall be documented by a qualified biologist and a letter-report shall be submitted to the County, USFWS, and CDFG, documenting Project compliance with the MBTA and applicable Project mitigation measures.
22. [BR-12] Prior to maintenance activities (e.g., sediment removal and/or vegetation trimming/topping), a qualified biologist will survey for sensitive species (e.g., California red-legged frog, two-stripe garter snake, and pacific pond turtles). If frogs, garter snakes, or pond turtles are found within the maintenance area, maintenance activities will halt until the animal has moved out of the Project area without assistance (e.g., harassment or handling).

Cultural Resources

23. [CR-1] The County shall conduct additional subsurface testing for buried deposits prior to construction or have an archaeologist and Native American monitor during ground-disturbing activities

Conditions to be completed prior to completion of the project

24. Prior to completion of the project, the applicant shall contact the Department of Planning and Building to have the site inspected for compliance with the conditions of this approval.

On-going conditions of approval (valid for the life of the project)

25. This land use permit is valid for a period of 48 months from its effective date unless time extensions are granted pursuant to Coastal Zone Land Use Ordinance Section 23.02.050 or the land use permit is considered vested. This land use permit is considered to be vested once substantial site work has been completed. Substantial site work is defined by Coastal Zone Land Use Ordinance Section 23.02.042 as site work progressed beyond grading and completion of structural foundations; and

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construction is occurring above grade.

26. All conditions of this approval shall be strictly adhered to, within the time frames specified, and in an on-going manner for the life of the project. Failure to comply with these conditions of approval may result in an immediate enforcement action by the Department of Planning and Building. If it is determined that violation(s) of these conditions of approval have occurred, or are occurring, this approval may be revoked pursuant to Section 23.10.160 of the Coastal Zone Land Use Ordinance.